Independent Investigative Mechanism for Myanmar

Bulletin

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Message from the Head of the Mechanism

Geneva, 28 February 2021 - I am deeply concerned by the statement of the Office of the High Commissioner for Human Rights reporting that they have received credible information that today, 28 February 2021, at least 18 persons were killed and over 30 wounded when police and military personnel used force, including firing live ammunition into crowds of protestors. This follows reports that hundreds of protestors, journalists, elected officials and political activists have been detained with no apparent legal basis and often with no information about their detention made available by authorities.

These acts, including the alleged use of excessive force against peaceful protestors resulting in killings and injuries, arbitrary arrests and enforced disappearances, may amount to serious human rights violations as well as crimes against humanity when committed as part of a widespread or systematic attack on a civilian population. As required by our mandate, the Mechanism will be collecting and analysing evidence of what happened and building case files that could facilitate criminal prosecutions. These attacks on the people of Myanmar must stop.

Last month, the Human Rights Council conducted a special session on "the human rights implications of the crisis in Myanmar". Member States adopted a resolution "expressing deep concern at the declaration of the state of emergency imposed in Myanmar by the military on 1 February", but also "taking note of the ongoing processes to ensure justice and accountability in respect of alleged crimes committed against Rohingya Muslims and other minorities in Myanmar." These issues are inextricably linked and the events of the last several weeks clearly illustrate the crucial role of institutions like the Mechanism, which is working to ensure accountability for the past and deter the most serious international crimes from being committed in the future.

During the special session, several Member States and civil society organisations raised concerns about the continuing impunity in Myanmar, and emphasised the need to pursue justice and accountability. They also called on Myanmar to fully cooperate with and allow the UN Special Rapporteur on the situation of human rights in Myanmar, the Office of the High Commissioner for Human Rights, and the Mechanism to have access to Myanmar.

The mandate of the Mechanism is to collect evidence of "the most serious international crimes and violations of international law committed in Myanmar since 2011." The Terms of Reference for the Mechanism make it explicit that the reference to violations of international law includes serious human rights violations. The Mechanism is further mandated to prepare case files that would facilitate criminal proceedings in national, regional or international courts to hold to account those persons individually responsible for such crimes. The temporal mandate of the Mechanism is ongoing and continues to cover all such crimes and violations of international law committed in the territory of Myanmar.

The Myanmar Mechanism is committed to doing our part to ensure that those who committed serious international crimes in Myanmar are held to account. We appreciate the assistance and support of all those who share our aim to end impunity for such crimes in Myanmar.

Institutional update

Since the Mechanism issued its last Bulletin in October 2020, it has continued to make progress despite the extraordinary circumstances brought about by a global pandemic.

The Mechanism has continued to develop internal policies and protocols in line with relevant international law and standards, and good practices. It has been focusing on bolstering its digital and cybersecurity efforts in order to ensure the safe storage of information and evidence. The Mechanism continues to collect evidence of crimes within its mandate and to analyse its significance. In 2020, the Mechanism collected information items with a total volume of over 416 GB, and processed 351,724 information items for analysis.

While the Mechanism's ability to travel to conduct investigative activities remains significantly restricted due to the COVID-19 pandemic, it has been engaging with information sources through secure electronic means, conducting open source investigations, and sending written requests for information.

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Email: iimm@un.org

Signal: +41 76 691 1208

The Mechanism continues to cooperate with the International Criminal Court (ICC), and has shared information with both Parties to the proceedings before the International Court of Justice (ICJ), The Gambia and Myanmar.

The Mechanism continues to reach out to the Government of Myanmar for its cooperation and for access to its territory. On 31 December 2020, in resolution 75/238, the General Assembly reiterated "the urgent call upon the government of Myanmar [...] to cooperate and engage meaningfully with the newly appointed Special Rapporteur on the situation of human rights in Myanmar, the Independent Mechanism and other United Nations mandate holders and mechanisms working on Myanmar, including by facilitating visits and granting unrestricted access throughout the country."

It is important for the Mechanism to have access to the territory where the evidence, victims, and witnesses are located to ensure that judges will have all the information that they need to ensure fair proceedings. At the same time, the cooperation of Member States is also needed in order to ensure the protection of witnesses and prevent any reprisals for cooperation with the Mechanism.

In December 2020, the Mechanism moved into its new office premises at the Palais des Nations. The prefabricated office facility was constructed after the Mechanism determined that this was the most cost-effective and technically acceptable option, while ensuring the security and integrity of the information it collects.



Palais des Nations (UN Photo / Rick Bajornas)

The Mechanism has been affected by the UN's financial and liquidity crisis, including cuts to consultancy and travel budgets across the UN Secretariat. For the Mechanism's 2021 budget, the General Assembly authorized 55 full-time positions. The Mechanism is also mobilising extrabudgetary funding for specific projects in order to supplement its resources from the regular UN budget.

Outreach



Speakers at the event on international justice and accountability for the Rohingya (Bangladesh High Commission, London)

Public outreach remains a priority for the Mechanism to promote greater understanding of its complex work, and to gain the confidence and cooperation of relevant stakeholders. By raising awareness of its open-ended mandate, the Mechanism may also deter perpetrators from committing new crimes.

The Mechanism has participated in several high-level public events, which were held online due to the global pandemic. In October, Mr. Nicholas Koumjian, the Head of the Mechanism joined representatives from Member States and civil society in an event on international justice and accountability for the Rohingya.

“Our mandate covers the territory of Myanmar,” he said. “It covers, of course, the crimes against Rohingya people, but it also covers crimes against any human being in Myanmar if the facts amount to a serious international crime.”

“We understand that refugees who have fled the country, fled for a reason,” he added. “Accountability for those responsible for crimes is an important element to creating the conditions where people can return. People will not want to return to the same location where those responsible for very serious crimes against their relatives continue to exercise the same power with impunity. It’s very important that there be a mechanism or a process to end the impunity for these very serious crimes.”

In December, Mr. Koumjian participated in a discussion on lessons learned, opportunities and challenges of international justice for victims of the crime of genocide. Mr. Koumjian explained the Mechanism’s mandate and work, as well as some of the main challenges that it faces, including the refusal of Myanmar authorities to allow the Mechanism to enter the country.

“We continue to reach out and we will continue to reach out to the Government of Myanmar, seeking their cooperation to allow us to carry out our important mandate,” Mr. Koumjian said.

He also spoke about the importance of dialogue with victims. The Mechanism is doing all it can to build up its dialogue with victims to listen to what they have to say and to have them better understand what the Mechanism can and cannot do for them in their pursuit of justice and accountability.

“To overcome these challenges, we’re going to need the cooperation of many others, including either national or international courts that could bring some justice to these victims,” he concluded.

In addition to these public events, Mechanism personnel have engaged in dialogues with stakeholders, including representatives of Member States and civil society. The Mechanism also regularly provides information about its mandate and updates on relevant developments through its website, Facebook page and the Bulletin in the English and Myanmar languages.

The Mechanism plans to travel to engage in person with a wider range of stakeholders once it is safe to do so, and facilitate structured engagement between the Mechanism and civil society working on Myanmar in order for the Mechanism to inform stakeholders about its work and receive feedback.

Frequently Asked Questions

HOW DOES THE MECHANISM ENSURE THE PRIVACY, SECURITY AND WELL-BEING OF VICTIMS AND WITNESSES?

The Mechanism recognizes the importance of protecting the privacy and security of persons who provide information to the Mechanism. It will not share the information they provide, or any information about their identity, without their consent to share with competent courts or other parties. The Mechanism encourages potential information providers to make initial contact with the Mechanism before sharing any information, to ensure that any communications are carried out securely.

The Mechanism also ensures a victim-centric approach in its work. The Mechanism will only interview victims if it will significantly advance the work. It recognises that many victims have already been interviewed in the past for human rights documentation purposes and will strive to prevent unnecessary duplication that could lead to further re-traumatisation. The Mechanism is also working on building its witness protection and support capacity, with the aim of meeting the specific needs of witnesses.

HOW DOES THE MECHANISM INTEGRATE SEXUAL AND GENDER-BASED VIOLENCE IN ITS WORK?

The Mechanism recognises that there are many challenges and barriers to effectively investigating and prosecuting sexual and gender-based crimes. The Mechanism will ensure that these crimes are given particular attention from the outset, and that the full range of criminality, gravity, and impact of these crimes are all addressed in its work. The Mechanism has recruited several personnel with relevant experience and expertise in investigating these crimes including interacting with victims and witnesses, including children. The Mechanism will also ensure that all its personnel are given regular training in these areas. Protocols and guidelines are being developed to ensure that the Mechanism works effectively to address sexual and gender-based crimes, in a manner that ensures that the voices and needs of those who suffered such crimes are taken into account.

WHY ARE OPEN SOURCE INVESTIGATIONS IMPORTANT FOR COLLECTING EVIDENCE OF CRIMES?

Open source investigation is a method of conducting investigations through the collection and analysis of publicly available or "open source" information or tools, which are primarily found online. This type of digital information gathering and analysis has become increasingly useful in criminal investigations, particularly when investigators cannot physically go to the crime scene in a timely manner. With mobile phones being utilized more than ever before, people in remote locations can record and post events amounting to serious international crimes in a way not previously possible. Investigators can then look at, archive, verify and analyse this digital information as part of their investigations. Verification and analysis is a rigorous, but an essential part of open source investigations, especially when misinformation and "deep fakes" are rampant on the internet. There are many steps that need to be taken before a piece of content posted online can be presented in a court room, but such evidence is increasingly being used in both domestic and international criminal investigations alike.

Open source information can be useful in providing lead information as well as being corroborative information for other types of evidence, such as witness testimony, or serving as linkage evidence to establish a connection between a perpetrator and a crime. There are different forms of open source information that are of interest to investigators, including user-generated content on social media platforms; photos, videos, audio recordings and documents that are available on websites; information published by state agencies; postings by journalists, civil society organizations or academic institutions; geospatial imagery; transportation tracking and related data; and reports about corporate structures, ownership and financial transactions.